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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

REGIONAL OFFICE
EPA REGION III PHILA. PA
SEP 29 2008

IN THE MATTER OF:

Hunt Building Company, Ltd.
4401 North Mesa
El Paso, TX 79913
Respondent

Proceeding Under Class II and
Section 309(g)(2)(B) of the
Clean Water Act

Dover Air Force Base Properties, LLC
4401 North Mesa
El Paso, TX 79913
Respondent

CWA-03-2008-0328

Eagle Heights Housing Facility
Pinnacle Housing Office
1069 High Street
Dover, DE 19901
Facility

CONSENT AGREEMENT AND FINAL ORDER

I. STATUTORY AND REGULATORY AUTHORITY

This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Hunt Building Company, Ltd. ("Respondent Hunt" or "Hunt") and Dover Air Force Base Properties, LLC ("Respondent DAFBP" or "DAFPB"), pursuant to Section 309(g)(2)(B) of the Clean Water Act (hereinafter "CWA" or "the Act"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. The parties have agreed to the commencement and conclusion of this cause of action by issuance of this CAFO pursuant to Section 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, and having consented to the entry of this CAFO, agree to comply with the terms.

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among

other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402 of the CWA, 33 U.S.C. § 1342, provides for the issuance of NPDES permits which allow the discharge of pollutants under specified conditions.
3. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutant" to include "any addition of any pollutant to navigable waters from any point source".
4. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water".
5. "Point Source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, ...from which pollutants are or may be discharged".
6. "Waters of the United States" are defined by 40 C.F.R. § 122.2 to include interstate waters and tributaries thereto.

II. FINDINGS OF FACT

EPA and the Respondents stipulate as follows:

7. Respondent Hunt is a design-build and construction management company wholly owned by W.L. Hunt, Chairman of the Board, and M.L. Hunt, President.
8. Respondent Hunt operates a construction company with its principle place of business at 4401 North Mesa, El Paso, TX 79913.
9. Respondent DAFBP is a Limited Liability Company, established under the laws of Delaware.
10. Respondent DAFBP owns and operates a military residential facility at the Dover Air Force Base, described more fully below. Its principle address is 4401 North Mesa, El Paso, TX 79913.
11. The Dover AFB Privatization Program is a real estate transaction in which the United States of America has conveyed by quitclaim deed, dated September 30, 2005, certain improvements at the Eagle Heights Housing Facility ("Eagle Heights" or "Facility") located at the Dover Air Force Base, in Kent County, Delaware, to Respondent DAFBP.

The improvements conveyed to Respondent DAFBP include approximately 1,490 residences, the storm drainage system and the sanitary sewage system serving the Facility. As part of this real estate transaction the United States has leased the real estate at the Facility to Respondent DAFBP for a 50-year lease period.

12. As part of the Dover AFB Privatization Program the Respondents plan to demolish over 980 existing homes and construct over 770 new homes at the Facility. As of the date of this CAFO, Respondents have demolished numerous existing homes and constructed numerous new homes.
13. The St. Jones River runs along the western section of the Eagle Heights housing community at a distance of 400 feet.
14. Respondents commenced land disturbing activities in excess of five acres at Eagle Heights on or around April 24, 2006, when it commenced construction operations at Eagle Heights. Respondents intend to conduct land disturbing activities on approximately 168 acres.
15. Respondents are currently scheduled to continue land disturbing activities through October 2008.
16. On October 17 and November 17, 2006, Delaware Department of Natural Resources and Environmental Control ("DNREC") representatives observed the discharge of pollutants in storm water from the Facility, via a culvert, to the St. Jones River.
17. On October 17, 2006, the Dover Air Force Base weather station reported 1.12 inches of precipitation. On November 17, 2006, the Dover Air Force Base weather station reported 0.52 inches of precipitation.
18. On June 25, 2007, DNREC and Dover Air Force Base personnel led EPA representatives on a site visit of the Facility. During the site visit EPA personnel observed evidence of discharges of pollutants from the Site.
19. Since the time that the Respondents commenced land disturbing activities at the Facility and until December 31, 2007, the Dover Air Force Base weather station reported daily precipitation greater than 0.67 inches on at least 33 days.
20. At the time of the EPA inspection on June 25, 2007, Respondents had not applied to the State of Delaware for coverage pursuant to a NPDES permit for the Facility.
21. On or about September 10, 2007, DNREC received Respondent Hunt's Notice of Intent, which sought coverage under the Delaware general storm water construction permit. Respondent Hunt's NOI identified the St. Jones River as the receiving watershed.
22. On November 13, 2007, and December 3, 2007, DNREC inspected the Facility and

determined that Respondents had failed to fully and successfully implement their approved Sediment and Storm Water Management Plan. During these inspections DNREC observed evidence of discharges of pollutants from the Site.

III. CONCLUSIONS OF LAW

EPA makes the following Conclusions of Law, which Respondents neither admit nor deny:

23. Hunt Building Company Ltd., is a privately owned business and therefore is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2.
24. Dover Air Force Base Properties, LLC, is a limited liability company and therefore is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5)40 C.F.R. § 122.2.
25. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities that have "storm water discharges associated with industrial activity" are "point sources" subject to the prohibition on discharge of pollutants under Section 301 of the Act, 33 U.S.C. § 1321, and the NPDES permitting requirements under Section 402 of the Act, 33 U.S.C. § 1321.
26. Respondents own and continue to operate a facility engaged in industrial activity that required an NPDES permit.
27. Respondents discharged pollutants from the Facility, through a culvert, into the St. Jones River without an NPDES permit.
28. Land disturbing activities in excess of five acres is an industrial activity requiring an NPDES permit pursuant to 40 C.F.R. § 122.26(b)(14)(x).
29. Respondents' land disturbing activities at the Facility resulted in the disturbance of more than five acres of land and therefore required an NPDES permit.
30. St. Jones River is a water of the United States as defined by 40 C.F.R. § 122.2.
31. Respondents have violated Section 301 of the Act, 33 U.S.C. § 1311, by discharging pollutants in storm water from its Facility to waters of the United States without an NPDES permit during the period from April 24, 2006, to September 10, 2007.
32. Because Respondents failed to successfully implement the approved Sediment and Stormwater Management Plan from September 10, 2007 until December 31, 2007, Respondents have discharged pollutants in storm water associated with construction

activity to the St. Jones River in violation of their NPDES permit. Accordingly, Respondents have violated Section 301 of the Act, 33 U.S.C. § 1311 during the period from April 26, 2006, to September 10, 2007.

33. Pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, Respondents are liable for a civil penalty of up to \$11,000 per day for each day during which a violation occurred.

IV. GENERAL PROVISIONS

34. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the State of Delaware regarding this action, and in addition will mail a copy of this document to the appropriate State official.
35. For the purpose of this proceeding:
- a. Respondents admit the jurisdictional allegations set forth in this CAFO;
 - b. Respondents neither admit nor deny the allegations set forth in the Consent Agreement;
 - c. Respondents consent to the assessment of the civil penalty (the "Civil Penalty") set forth herein;
 - d. Respondents hereby expressly waive their right to contest the allegations set forth in this CAFO at a hearing under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B);
 - e. Respondents waive their right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).
36. This CAFO shall not relieve Respondents of their obligations to comply with all applicable provisions of federal, state, or local law, nor shall it be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 and 404 of the CWA, 33 U.S.C. § 1342 and 1344, or any other law.
37. This Consent Agreement and the accompanying Final Order, resolves only the civil claims against the Respondents for the specific violations alleged in paragraphs 31 and 32 herein. EPA reserves the right to commence an action against any person, including

Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its effective date. By entering into this settlement, Respondents do not admit to liability for the violations alleged herein.

38. EPA reserves the right to institute a new and/or separate action should Respondents fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
39. The undersigned representative of the Respondents certifies that he/she is fully authorized by the Respondents to enter into the terms and conditions of this CAFO and to execute and legally bind the Respondents to it.
40. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO or any of its terms and conditions is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. PENALTY

41. The Respondents consent to the assessment of a Civil Penalty in full and complete settlement of EPA's civil claims for the violations set forth herein above in the amount of \$120,000.00

VI. PAYMENT TERMS

42. Respondents shall pay the Civil Penalty within thirty (30) days of the effective date of the CAFO pursuant to 40 C.F.R. § 22.31(c), by cashier's or certified check, payable to the "Treasurer, United States of America". Payment shall be mailed to the following address:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

43. Respondents shall note on the penalty payment check the title and docket number of this case.
44. Respondents shall submit notice of payment, along with a copy of the check to:

Regional Hearing Clerk (3R000)
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103

with copies sent to:

Andrew Duchovnay (3RC20)
Sr. Asst. Regional Counsel
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103


45. The following concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:
 - a. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts;
 - b. Interest on the Civil Penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a);
 - c. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resource Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid;
 - d. A penalty charge, not to exceed six percent, will be assessed monthly on any
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portion of the Civil Penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

VII. EFFECTIVE DATE

Pursuant to 40 C.F.R. § 22.45(c)(3), this CAFO shall be filed with the Regional Hearing Clerk after a 40-day public comment period has concluded. The CAFO will become final and effective 30 days after it is filed with the Regional Hearing Clerk.

FOR Respondent Hunt Building Company, Ltd.



Title
Name

15 August 2008
Date


FOR Respondent Dover Air Force Base Properties, LLC



Title
Name

15 August 2008
Date

For EPA



Jon M. Capacasa, Acting Director
Water Protection Division

September 24, 2008
Date

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Dover Air Force Base Properties, LLC
4401 North Mesa
El Paso, TX 79913
Respondent


Eagle Heights Housing Facility
Pinnacle Housing Office
1069 High Street
Dover, DE 19901
Facility

FINAL ORDER

Pursuant to Sections 301 and 309(g) of the Clean Water Act, 33 U.S.C. § 1311 and 1319(g), and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

U.S. Environmental Protection Agency

Date: 9/29/08



/s/ Donald S. Welsh
Regional Administrator
EPA, Region III